

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION**

**MICHAEL JOE GREEN,
JOHNNY BROWN AND
ALETHA JOHNSON**

PLAINTIFF

VS.

**CITY OF MONTGOMERY, A
Municipal Corporation, J.J. ALLEN,
Officially and Individually, HENRY
DAVIS, Officially and Individually**

DEFENDANT

2007 FEB -1 P 3:57

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

CASE NO. 2:07 cv 92-WKW

NOTICE OF REMOVAL OF CIVIL ACTION

To the Honorable Judges of the United States District Court for the Middle District of Alabama, Northern Division:

COME NOW Defendants, City of Montgomery, J.J. Allen and Henry Davis pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343, and hereby gives notice of the removal of the above-captioned civil action styled Michael Joe Green, Johnny Brown and Aletha Johnson v. City of Montgomery, J.J. Allen and Henry Davis, Civil Action No.: CV-2006-3237, from the Circuit Court from Montgomery County, Alabama, where it is now pending, to the United States District Court for the Middle District of Alabama, Northern Division. As grounds for this removal, Defendants show unto the Court and allege as follows:

1. Defendant City of Montgomery is a municipal corporation in Montgomery County, Alabama. Individual Defendants J.J. Allen and Henry Davis are over the age of nineteen (19) years and are employees of City of Montgomery and are sued in their individual

and official capacity.

2. The Plaintiffs, Michael Joe Green, Johnny Brown and Aletha Johnson are over the age of majority and resident citizens of the State of Alabama.

3. This action styled, Michael Joe Green, Johnny Brown and Aletha Johnson v. City of Montgomery, J.J. Allen and Henry Davis was filed in the Circuit Court, Montgomery County, Alabama as Civil Action No.: CV-2006-3237.

4. This action is one over which this Court has original jurisdiction pursuant to 28 U.S.C. §1331, 42 U.S.C. §1983, 28 U.S.C. §1343, and may be removed by Defendants pursuant to 28 U.S.C. §1441(b) and 28 U.S.C. §1443. Defendants remove this action pursuant to 28 U.S.C. §1441, 28 U.S.C. §1331, 28 U.S.C. §1343, 28 U.S.C. 1367 and 28 U.S.C. §1443.

5. In the Complaint filed in the Circuit Court of Montgomery County, Alabama on December 29, 2006 and served on Defendants on January 4, 2007, Plaintiffs assert that Defendants unlawfully seized \$32,353.00 in lawful United States currency depriving Plaintiffs of property without due process of law in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section VI of the Alabama Constitution.

6. This Notice of Removal is timely filed with this Court within the thirty (30) day limitations set forth in 28 U.S.C. §1446(b). This action became removable on January 5, 2007, which is the date Defendants were served with the copy of Plaintiffs' Complaint. This Court has supplemental jurisdiction over all other claims of the Plaintiffs pursuant to 28 U.S.C. §1367.

7. This Notice of Removal is filed in this district and division pursuant to 28 U.S.C. §1446(a) and 28 U.S.C. §1443 as the court for the United States for the district and division within which such action is pending. Venue is proper pursuant to 28 U.S.C. §1391(b).

8. A copy of the Summons and Complaint served upon Defendants in said action

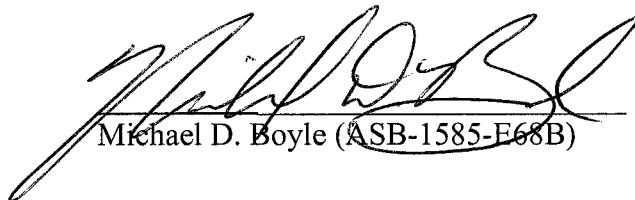
and contained in the file of the Circuit Court of Montgomery County, Alabama, in said action is attached hereto as Exhibit "A" and made a part hereof in accordance with 28 U.S.C. §1446(a).

9. In accordance with 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Montgomery County, Alabama, and written notice thereof has been given to all adverse parties. A copy of the Notice of Filing of Notice of Removal is attached hereto as Exhibit "B".

10. By filing this Notice of Removal, these Defendants do not waive any defense that may be available to the Defendants.

WHEREFORE, Defendants file this Notice of Removal so as to effect the removal of this action from the Circuit Court of Montgomery County, Alabama, to this court. Defendants pray this Honorable Court will make such other orders as may be appropriate to effect the preparation and filing of a true record in this cause so that all proceedings that may have been had in said Circuit Court are removed to this Court. Defendants further pray that the removal of this cause to this court should be effected and that no further or other proceedings shall be had with respect to this cause in the Circuit Court of Montgomery County, Alabama.

Respectfully submitted this the 1st day of February, 2007.



Michael D. Boyle (ASB-1585-E68B)

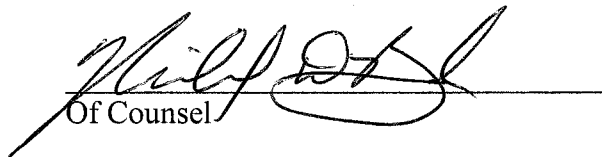
OF COUNSEL:

Legal Department
City of Montgomery
Post Office Box 1111
Montgomery, Alabama 36101-1111
(334) 241-2050
(334) 241-2310 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a copy of the above and foregoing to the attorneys listed below by hand delivery or by placing a copy of same in the United States Mail, postage prepaid, this 1st day of February, 2007:

Joe M. Reed
524 South Union Street
Montgomery, Alabama 36104


Of Counsel

State of Alabama Unified Judicial System Form C-34 Rev 6/88	SUMMONS -CIVIL-	Case Number <u>CV-06-</u> <u>3237</u>
IN THE <u>Circuit</u> COURT OF <u>Montgomery</u> COUNTY		
Plaintiff <u>Michael Joe Green, Johnny Brown</u> v. Defendant <u>City Of Montgomery,</u> <u>and Aletha Johnson</u> <u>J.J. Allen and Henry Davis</u>		
NOTICE TO <u>City Of Montgomery</u>		
<p>THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY <u>Joe M. Reed</u> WHOSE ADDRESS IS <u>524 South Union Street</u> <u>Montgomery, Alabama 36104</u></p>		
<p>THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN <u>30</u> DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT.</p>		
<p>TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure:</p> <p><input type="checkbox"/> You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant.</p> <p><input type="checkbox"/> Service by certified mail of this summons is initiated upon the written request of _____ pursuant to the Alabama Rules of Civil Procedure.</p> <p>Date _____ <u>Melissa Zittman</u> Clerk/Register</p> <p><input type="checkbox"/> Certified Mail is hereby requested.</p> <p>Plaintiff's/Attorney's Signature _____</p>		
<p>RETURN ON SERVICE:</p> <p><input type="checkbox"/> Return receipt of certified mail received in this office on _____ (Date)</p> <p><input type="checkbox"/> I certify that I personally delivered a copy of the Summons and Complaint to _____ in _____ County, Alabama on _____ (Date)</p> <p>Date _____ Server's Signature _____</p> <p>Address of Server _____ Type of Process Server _____</p>		

EXHIBIT

A

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY
CIVIL DIVISION

Michael Joe Green,

*

Johnny Brown, and

*

Aletha Johnson

*

Plaintiffs,

*

*

VS.

*

CV-06-
3237

City of Montgomery, a Municipal Corporation

J.J. Allen, Officially and Individually

*

Henry Davis, Officially and Individually

*

Defendants.

*

COMPLAINT
AND MOTION FOR RELEASE AND RETURN OF SEIZED MONEY

Now Come the Plaintiffs/claimants Michael Joe Green, Johnny Brown, Aletha Johnson by and through the undersigned, and move this Honorable Court for declaratory and injunctive relief and an Order releasing and returning to them certain personal property belonging to him unlawfully seized by the Montgomery, Alabama Police Department to wit: Thirty-Two Thousand Three Hundred Fifty Three Dollars (\$32,353.00) in lawful United States currency. As grounds Plaintiffs shows the Court the following:

FILED
CIRCUIT COURT OF
MONTGOMERY COUNTY
2006 DEC 29 PM 4:19

JURISDICTION

- The City of Montgomery is a Municipal Corporation created by the Alabama Legislature.
- All events occurred in Montgomery County Alabama.
- J.J. Allen is over the age of 18 years old and a Citizen of Montgomery, Alabama.
- Henry Davis is over the age of 18 years old a citizen of Montgomery Alabama and head of the Narcotics Division of the Montgomery Police Department believed to be in current possession of the seized funds.

FACTS

1. On or about December 6, 2006, the Montgomery Police Department seized approximately Eight Thousand Dollars (\$32,353.00) in lawful cash, coin, or currency of the United States of America, the property of the plaintiff/claimants Michael Joe Green, Johnny Brown, and Aletha Johnson.
2. The plaintiffs Michael Joe Green and Johnny Brown were stopped for speeding on Interstate 65 in Montgomery, Alabama. Officer J.J. Allen issued the plaintiff Michael Joe Green a speeding ticket. As Michael Joe Green was returning to his vehicle, Officer Allen asked Mr. Green if he would consent to a search of his car. When Mr. Green refused to consent to the search and kept walking toward his vehicle, Officer Allen followed Mr. Green and took hold of him and threw him to the ground and handcuffed him and placed him under arrest.

3. Officer Allen then ordered the passenger Johnny Brown from the vehicle where he was handcuffed and placed under arrest. Officer Allen asked Mr. Green if there was anything in the car he needed to know about. Mr. Green told him that there was approximately \$20,000.00 in cash on the backseat floorboard. Officer Allen called a K-9 unit to the scene where the K-9 alerted to the vehicle. A search of the vehicle revealed marijuana and an additional \$10,000.00 in the glove compartment. The \$10,000 in cash belongs to Aletha Johnson. The search incident to the arrest revealed \$1,853.00 located on Michael Joe Green and \$500.00 located on Johnny Brown.
4. Brown was charged with Possession of Marijuana, second degree. Green was not charged with any violation other than speeding. Officer Allen took possession of all confiscated cash.
5. From the date of the seizure of the money until the present time there have been no charges filed against Michael Green or Johnny Brown by the City of Montgomery or the State of Alabama connecting them with a drug transaction in which the money seized from their person were the proceeds, or a charge where the money was intended to be used in a drug transaction, i.e. a controlled buy.
6. Mere possession of marijuana, in close proximity of cash, is not a ground for the forfeiture of the cash.
7. The claimants have not engaged in any conduct which would invoke the jurisdiction of the State of Alabama or its agents to continue to detain the

plaintiffs' money. Such detention is an unlawful conversion and interferes with the claimants' right of dominion and use of the money and thereby deprives them of their property without due process of law in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section VI of the Alabama Constitution.

8. Although the claimants have continued to lay claim to the money, it remains in the custody of the Montgomery Police Department, therefore interfering with and preventing claimant's right of dominion over and use of the money and thereby depriving him of his property without due process of law in violation of the Fourteenth Amendment of the United States Constitution and Article I, Section VI of the Alabama Constitution.
9. The money was not intended to be used in violation of Section 20-2-93 of the Alabama Code, 1975, as amended, nor can the City make a probable cause/prima facie showing of a violation, which they are obligated to do before they can begin forfeiture proceedings.
10. Montgomery Police Officers had no probable cause to seize the plaintiff's currency. Such seizure is not meritorious, as the police department cannot connect the currency or the claimant with any controlled substance violation involving the currency, which could justify the seizure.
11. Although the claimants have continued to lay claim to the money, it remains in the custody of the City of Montgomery or its agents, therefore interfering with, and preventing the claimant's right of dominion over and use of the money and thereby depriving him of his property without due

process of law in violation of the Fourteenth Amendment to the United States Constitution and Article one Section IV of the Alabama Constitution.

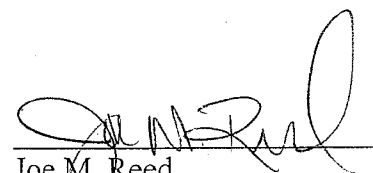
DEMAND FOR JUDGMENT

Plaintiff demands judgment under the following terms:

1. Declaration that the conduct of the defendants violated the rights of the plaintiffs under the appropriate constitutional amendments and;
2. That the defendants be enjoined from harassing, intimidating, threatening or otherwise interfering with the lawful travel habits of the plaintiffs, and;
3. Mandatory injunctive relief requiring the defendants to immediately restore the defendant their property and;
4. Costs, and;
5. Such other relief as the Court may deem appropriate, the premises considered.

Wherefore, claimant prays that this Court conduct a hearing on this matter and after the hearing enter its Order restoring all rights to and possession of the money to the claimant.

Date: _____


Joe M. Reed
Attorney for Plaintiff

CERTIFICATE OF SERVICE

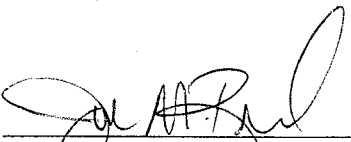
I herby certify that the following was served on

City of Montgomery
103 N. Ripley Street
Montgomery, Alabama 36104

Officer J.J. Allen
Montgomery Police Department
320 N. Ripley Street
Montgomery, Alabama 36104

Major Henry Davis
Montgomery Police Department
320 N. Ripley Street
Montgomery, Alabama 36104

By certified mail, return receipt.



Joe M. Reed

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

MICHAEL JOE GREEN,
JOHNNY BROWN AND
ALETHA JOHNSON

PLAINTIFF

VS.

CASE NO: CV-06-3237

CITY OF MONTGOMERY, A
Municipal Corporation, J.J. ALLEN,
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DAVIS, Officially and Individually

DEFENDANT

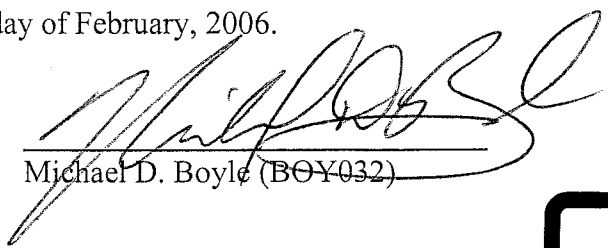
NOTICE OF FILING NOTICE OF REMOVAL

TO: Melissa A. Rittenour
Circuit Clerk
251 S. Lawrence Street
Montgomery, AL 36104

Joe M. Reed
524 South Union Street
Montgomery, Alabama 36104

Please take notice that Defendants, City of Montgomery, J.J. Allen and Henry Davis sued in their individual and official capacity, have on this date filed a Notice of Removal, a true and correct copy of which is attached hereto, in the office of the clerk of the United States District Court for the Middle District of Alabama, Northern Division, at Montgomery, Alabama.

Respectfully submitted this the 1st day of February, 2006.


Michael D. Boyle (BOY032)

EXHIBIT

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B

OF COUNSEL:

Legal Department

City of Montgomery

Post Office Box 1111

Montgomery, Alabama 36101-1111

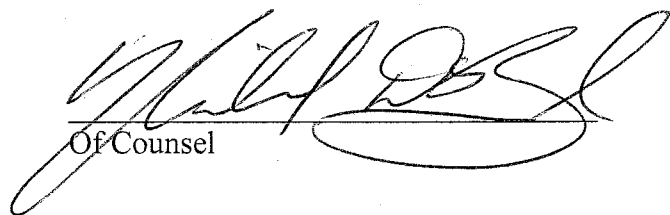
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Of Counsel